

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
June 27, 2023**

Place: Room 206, Darien Town Hall

TIME: 7:30 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Olvany, Balgach, Nedder, Barsanti

STAFF ATTENDING: Ginsberg, Doneit

Recorder: Karen Manz

Channel 79

Chairman Olvany opened the meeting at 7:30 P.M. and read the first agenda item:

PUBLIC HEARING

Continuation of Flood Damage Prevention Application #438, Land Filling & Regrading Application #546, Joshua & Shari Soloway, 9 Crane Road. Proposal to construct a new 4-bedroom single-family dwelling, construction of a new driveway, retaining walls, and terrace and porch areas; and to perform related site development activities within a regulated area, including regrading of the property and installation of stormwater management. The 1.2+/- acre subject property is located on the west side of Crane Road approximately 630 feet east/south of its intersection with Pear Tree Point Road, and is shown on Assessor's Map #60 as Lot #32 in the R-1 Residential Zone.

Mr. Doneit noted that the public hearing had been opened on May 23, 2023. It was continued to allow the applicant to address some of the concerns raised during the first hearing. It was noted that peer review engineer Joe Canas of Tighe & Bond submitted comments dated June 26, 2023. An e-mail from Craig Flaherty dated June 23, 2023 was also submitted for the record.

Professional engineer Jim Kousidis said that in response to comments received, the analysis was re-done, and an enhanced drainage plan prepared. The issue with the height of the building has been addressed by lowering the house by about 7.2 inches. He said that he does not object to the proposed condition of approval put forth by engineer Craig Flaherty. Mr. Kousidis then summarized the changes to the plans. There will be no change to the house location or the driveway. There will be no regrading on the west side of the property. They have extended the rain garden and added two more drainage systems and more subsurface structures below the rain garden. Two yard drains have been added. Mr. Olvany then asked whether a zoning text box had been submitted. Mr. Kousidis responded that he can prepare one. He then referred to the revised plans prepared by the architect. Mr. Doneit said that the applicant has responded to the comments submitted by peer review engineer Joe Canas of Tighe & Bond. Mr. Kousidis confirmed that they will comply with the condition for as-built surveys to be submitted.

Ms. Jennifer Errington of 116 Pear Tree Point Road asked about the proposed building height of the residence. Mr. Kousidis responded that the new proposed first floor elevation (FFE) will be 17.4, while the old proposal showed a FFE of over elevation 18. This is based upon the revised plans dated June 23, 2023. Ms. Errington noted that the Operations and Maintenance (O&M) Plan must also reflect the berm and swale, which also need to be maintained on a regular basis. Mr. Olvany

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 2

agreed that the O&M plan should be changed accordingly.

There being no further questions or comments from Commission members or the general public, Mr. Nedder then made a motion to close the public hearing on this matter. That motion was seconded by Ms. Barsanti, and approved by a vote of 4-0.

At about 7:52 p.m., Chairman Olvany then read the next agenda item:

Special Permit Application #330 / Site Plan, Northeast Hardwood, 170 Noroton Avenue. Proposal to establish a new custom wood products and hardwood furniture company, with a workshop area in the first and second floor space formerly occupied by William Seymour & Associates. The 0.14+/- acre subject property is located on the east side of Noroton Avenue approximately 160 feet south of its intersection with West Avenue, and is shown on Assessor's Map #40 as Lot #29; in the Service Business Zone (SB).

Mr. Ginsberg explained the proposed application, noting that a waiver of a traffic report and a waiver of stormwater management has been granted by staff. He said that comments had been received from Fire Marshal Robert Buch, dated June 14, 2023.

Mr. Peter Andre Argimbau said that the existing basement is at street level along Noroton Avenue. They will be assembling furniture, not manufacturing it. They will meet with clients and designers on-site. They make custom tables, using a sander, drill and skill saw. All such work will occur indoors. No power tools will be used outdoors. Mr. Olvany noted that there is now no Dumpster on-site. Mr. Argimbau responded that they do not have too much trash, and can easily use trash cans. Mr. Olvany asked about on-site parking. Mr. Argimbau responded that there are 16 on-site parking spaces, all of which are shared between the front building and the veterinary clinic in the back. The vet is closed on Saturdays and Sundays. Loading and unloading will occur only in the three front parking spaces. In response to a question, Mr. Argimbau said that no trucks will be parked overnight or will be visible from the street. Mr. Nedder confirmed that the business activities will not interfere with the sidewalk on Noroton Avenue.

Mr. Damian Batterly, the owner of the Park Animal Hospital veterinary clinic at 168 Noroton Avenue, voiced his concerns with trucks unloading, and coming in and out of the driveway. It was noted that his veterinary business is open 8 a.m. to 5 p.m. Monday through Friday. Mr. Argimbau responded that he can have truck loading and unloading occur when the veterinary clinic is closed: either before 8 a.m., after 5 p.m., or on weekends.

There being no further questions or comments from the public or Commission members, Mr. Balgach then made a motion to close the public hearing on this matter. That motion was seconded by Mr. Nedder, and approved by a vote of 4-0.

At about 8:16 p.m., Chairman Olvany then read the next agenda item:

Coastal Site Plan Review #357-A, Flood Damage Prevention Application #408-A, Western Island, LLC, 29 Tokeneke Trail. Proposal to construct a 19' x 20' terrace and pergola along the western

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 3

edge of the existing tennis court on the property, and to perform related site development activities within regulated areas. The 1.15+/- acre subject property is located on the west side of Tokeneke Trail, approximately 1,000 feet south of its intersection with Canoe Trail, and is shown on Assessor's Map #69, Lot #40A; R-1 Zone.

Mr. Ginsberg and Mr. Doneit summarized the application. They noted that comments were received from the State of CT DEEP on June 21, 2023 and peer review engineer Joe Canas of Tighe & Bond on June 15, 2023. There was a prior Planning & Zoning Commission approval in 2021, and since that time, the residence has been demolished.

Ms. Alyssa Fournier of Michael Trapp Inc., explained that the proposal includes a 20' x 18' raised bluestone patio and a 20' x 9' pergola. There will be light land disruption, and some soil brought in for the project. The entire project will take 2-4 weeks to complete. Ms. Fournier said that she is comfortable modifying the plan to respond to the CT DEEP recommendation to change the species of wisteria to be used on the pergola. It was noted that certified stamped plans will be needed for the pergola, since it is in the flood zone.

No members of the public spoke on this application.

There being no further questions or comments, Ms. Barsanti then made a motion to close the public hearing on this matter. That motion was seconded by Mr. Balgach, and approved by a vote of 4-0.

At about 8:25 p.m., Chairman Olvany then read the next agenda item:

Special Permit Application #60-S / Site Plan, Flood Damage Prevention Application #208-C, Country Club of Darien, 300 Mansfield Avenue. Proposal to replace an existing pump house and irrigation system located southeast of the clubhouse for the purposes of golf course irrigation, and to perform related site development activities within a regulated area. The subject property is located on the east side of Mansfield Avenue approximately 1,250 feet south of its intersection with Middlesex Road, and is shown on Assessor's Map #5 as Lot #40 in the R-2 Zone.

Ms. Barsanti noted that since she is a member of the Club, she will be recusing herself on this matter. Since there would not be a quorum to hear the case, the Commission opened the public hearing and continued it to Tuesday, July 11, 2023 at 7:30 p.m. in room 206 of Darien Town Hall.

At about 8:27 p.m., Chairman Olvany then read the next agenda item:

Coastal Site Plan Review #374, Flood Damage Prevention Application #179-A, Land Filling & Regrading Application #549, Mark & Stasha Cohen, 114 Five Mile River Road. Proposal to raze the existing residence on the site and to construct a new 5-bedroom single-family dwelling, construction of retaining walls, terrace areas, and a pool and cabana; and to perform related site development activities within regulated areas, including regrading of the property and installation of stormwater management. The 0.94+/- acre property is located on the west side of Five Mile River Road, about 115 feet south of its intersection with Davis Lane, and is shown on Assessor's Map #67 as Lot #23; R-1 and R-1/2 Residential Zones.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 4

Mr. Doneit summarized the application, and noted that the application must comply with Sections 810, 820 and 850 of the Darien Zoning Regulations. A ZBA variance was obtained within the past month. Peer review engineer Joe Canas of Tighe & Bond submitted comments in April, and EPC staff member Rick Talamelli submitted comments dated April 24. WestCOG submitted comments on the application on March 30, 2023, noting that: *"The opinion of WestCOG staff is that the proposal is of local interest and with minimal intermunicipal impact. Therefore, it is not being forwarded to adjacent municipalities and the regional staff is making no comment."* The State of Connecticut DEEP submitted comments dated April 22 and April 25. It was confirmed that the application was referred to the City of Norwalk.

Attorney Amy Zabetakis of Rucci Law Group said that there is a pond in the rear of the lot, and a lot width variance had been granted by the ZBA. The ZBA said that the barn did not need a variance. There is now on the premises a 3,600+/- square foot house, which is non-conforming, and the proposed 4,000+/- square foot house will meet the flood regulations, and have a first floor elevation of 15.0'. They have addressed the comments received from Mr. Canas and Mr. Talamelli. The front of the property is in the V flood zone.

Professional Engineer Craig Flaherty of Redniss & Mead showed an air photo of the property. He said that the subject property is lower than the adjacent properties. Swales have been proposed along the south property line. The proposed gutters and roof leaders are shown to run to the front yard infiltrators. He said that Darien DPW is okay with the overflow connection in the road. The back patio pitches to the infiltrator in the rear. The hedge along the south property line is to remain. The arborvitae along the south property line will be retained. Mr. Olvany confirmed that a landscaping plan has been submitted, and there is no current stormwater system on the property.

Mr. Flaherty then reviewed the June 20, 2023 comments from peer review engineer Joe Canas. He said that they will provide anchoring to the propane tank, and make sure that the flood vents are no more than one foot above the floor.

Attorney Robert F. Maslan, Jr., of Maslan Associates was present on behalf of the neighbors to the south, the Gadsdens. He then reviewed his Powerpoint presentation, noting that he had three major concerns. First was the amount of grading on the property, especially in the rear. There will be significant visual impacts. The pool and patio can be at a lower grade, and do not need to meet the flood regulations. Second, Mr. Maslan said that there needs to be a more well-defined swale. The grades in the front of the property need to be shown on the plans. There is no profile for the back yard. The proposed wall is too close and too high. He summarized his presentation by making the following suggestions/recommendations: a) slide the rear patio; b) show the proposed swale on the plans; c) confirm that the building height meets the regulations.

Mr. Flaherty said that they will be adding nine plantings near the south property line. He said that he can modify the plans to show a squiggly arrow to better reflect a proposed drainage flow direction. He said that they can add a weep hole near the catch basin. He noted that Section 850 of the Regulations does not discuss aesthetics.

Ms. Zabetakis confirmed that this will be the first house in this part of Five Mile River Road to meet the flood regulations. Mr. Maslan said that the Planning & Zoning Commission has denied

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 5

regrading applications before, most notably at the project at 175 Brookside Road, where the Commission believed there to be an impact of the proposed grading and walls. He said that in this case, there is also impact to due grading and walls.

There being no further questions or comments by the public or Commission members, Ms. Barsanti then made a motion to close the public hearing on this matter. That motion was seconded by Mr. Balgach, and approved by a vote of 4-0.

At about 9:45 p.m., Chairman Olvany read the first general meeting agenda item:

GENERAL MEETING

Amendment to Flood Damage Prevention Application #434, Lucas & Briony Raymond, 178 Nearwater Lane. Proposal to add a hot tub to a rooftop deck. The 0.19+/- acre subject property is located on the east side of Nearwater Lane approximately 80 feet south of its intersection with Shipway Road, and is shown on Assessor's Map #55 as Lot #2 in the Noroton Bay District Residential Zone (R-NBD).

Mr. Doneit explained that the residence now under construction was previously approved by the Planning & Zoning Commission. He summarized the subject application to install at hot tub on the roof of the house, which was not shown on the previously approved plans. Mr. Doneit mentioned that a letter was submitted dated June 26, 2023 signed by six neighbors supporting this application amendment.

Mr. Luke Raymond, the property owner, said that there will be a 42" knee wall on the roof and a cable rail fence. He said that safety is important to him.

Mr. Balgach made a motion to approve the amendment to the project. That motion was seconded by Mr. Nedder, and approved by a vote of 4-0.

At about 9:51 p.m., Chairman Olvany read the next agenda item:

Deliberations and possible decisions regarding:

Business Site Plan Application #234-B, Special Permit Application #236-A, Grove Street Plaza, LLC, Harvest Restaurant Group, 14 Grove Street. Proposal to establish a new Full Service Restaurant in the first floor and basement space formerly occupied by the Melting Pot. Proposal to establish part-time, seasonal use of the existing public plaza area to accommodate outdoor dining for the new restaurant, the businesses at 20 Grove Street, and the general public. ***DECISION DEADLINE: 6/29/2023.***

Commission members reviewed the draft resolution. Comments were made, and changes proposed to pages 3, 5 and 6. Mr. Nedder then made a motion to adopt the Resolution as amended. That motion was seconded by Mr. Balgach and approved by a vote of 4-0. The Adopted Resolution read as follows:

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 6

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
June 27, 2023**

Application Number: Business Site Plan Application #234-B, Special Permit Application #236-A
Grove Street Plaza, LLC, Harvest Restaurant Group (PL 23-56)

Street Address: 14 Grove Street
Assessor's Map #73 Lot #22

Name and Address of Property Owner(s): Grove Street Plaza, LLC
And Applicant(s): c/o 23 Butler's Island Road
Darien, CT 06820

Name and Address of Applicant's Representative: Robert F. Maslan, Jr., Esq.
Maslan Associates PC
30 Old King's Highway South
Darien, CT 06820

Activity Being Applied For: Proposal to establish a new Full Service Restaurant, known as Roots Ocean Prime, in the first floor and basement space formerly occupied by the Melting Pot. Proposal to establish part-time, seasonal use of the existing public plaza area to accommodate outdoor dining for the new restaurant.

Property Location: The space is located within Grove Street Plaza, a 0.35+/- acre property, located on the northwest side of Grove Street at its intersection with Brook Street.

Zone: Central Business District (CBD)

Date of Public Hearing: April 25, 2023
Deliberations held: May 9, 2023 and June 6, 2023

Time and Place: 7:30 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: April 13 & 20, 2023

Newspaper: Darien Times

Date of Action: June 27, 2023

Action: GRANTED IN PART WITH
STIPULATIONS AND MODIFICATIONS

Scheduled Date of Publication of Action:
July 6, 2023

Newspaper: Darien Times

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 720, 1000, and 1020 of the Darien Zoning Regulations for the Commission to approve this project.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 7

- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicants and applicants' representatives whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to: 1) establish a new Full Service Restaurant in the first floor and basement space formerly occupied by the Melting Pot; and 2) to establish part-time, seasonal use of the existing public plaza area to accommodate outdoor dining for the new restaurant.
2. The subject property consists of 15,248+/- square feet of land, two mixed use buildings, a 1,775+/- square foot public plaza with a fountain, an easement for portions of adjacent municipal parking spaces and related improvements. There are now ten residential apartments on the upper floors of the buildings on the property.
3. The applicant's attorney submitted a five-page narrative with attachments dated March 27, 2023, supplemented by a two-page April 25, 2023 "Supplement to Application Narrative", which outlined the proposed requests. It is noted that the prior restaurant in this space, the Melting Pot, did not have cooking in the kitchen. All food cooking occurred at the patrons' tables.
4. Comments have been received from the Darien Health Department and the Fire Marshal. A new hood and vent are proposed for the building, and the applicant has submitted details regarding a change in the basement use, to include a new food preparation area as well as changes to the outdoor dining and public plaza.
5. At the public hearing, Mr. David Genovese explained the differences between the subject application and the prior approval for the Melting Pot. He said that one of the differences is that the Melting Pot was not open for lunch, whereas the subject restaurant will be open for lunch and brunch, as well as for dinner. They will also be installing an odor controlling ventilation system. A new entrance to the restaurant facing Grove Street will be created, utilizing an existing doorway in that location.

ESTABLISHMENT OF NEW FULL SERVICE RESTAURANT

6. The applicants' attorney Robert F. Maslan Jr. said that the proposed new tenant would be making interior changes to the first-floor and the basement space formerly occupied by the Melting Pot.
7. A conceptual interior first-floor plan for the new restaurant was included in the applicant's narrative as page A-13. It shows an interior seat count of 14 at the bar; 26 within the bar area;

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 8

and 80 within two separate dining rooms, for a total of 120 indoor seats. The Commission notes that the 120 indoor seats represents a reduction in the 164 approved seats for the Melting Pot.

8. Proposed changes to the existing basement were described in the applicant's April 25, 2023 supplement to the application narrative. It notes that they now propose food preparation in the basement, in addition to the previously existing uses, including dry storage, an employee restroom, employee lockers/changing area, freezer and cooler, a sink, and a 220 +/- square foot administrative office.
9. The application also proposes changes to the hours of operation of the business from that approved for the Melting Pot. Page 3 of the application narrative notes the proposed hours for the entire restaurant (both indoor and outdoor) as follows:
 - 11:30am-11pm Monday through Wednesday;
 - 11:30am to midnight on Thursday through Saturdays; and
 - 11am to 10pm on Sundays.

It is acknowledged that the owner and employees of the restaurant may need to come in earlier or stay later. Due to its location directly below residential units, and adjacent to Clock Hill Homes, any expansion of the approved hours of operation shall require further review and action by the Planning and Zoning Commission.

10. The restaurant anticipates 12 employees during lunch hours and 20 employees during dinner hours.
11. The Commission acknowledges that the other commercial tenants on the Grove Street Plaza property are presently Flour Water Salt Bread and Espresso Neat, both of which do not serve lunch or dinner. While both of those other tenants are open in the morning, the proposed restaurant tenant will not be open until 11am at the earliest.

PARKING

12. As part of the original approval to redevelop this property, land was given to the Town for permanent use as a public parking area. Under Section 1057 of the Darien Zoning Regulations, this exempts this project from the normal applications of the Parking Regulations.
13. The Commission finds that adequate off-street parking spaces are provided for within the Grove Street Municipal Parking Lot to accommodate the restaurant along with other uses in the vicinity of the business.

TRASH REMOVAL

14. Business Site Plan #234-A/Special Permit also noted the following: "All dumpsters and transformers are specifically designed to be on the property of Grove Street Plaza, LLC. Therefore, their maintenance will be the sole responsibility of Grove Street Plaza, LLC, or any subsequent owners. The Town of Darien will not accept responsibility for maintenance of trash removal or the condition of the dumpster enclosures."

LIGHTING

15. There will be no change in the exterior lighting in the plaza, but they may be adding lighting on the tables.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 9

EXISTING PUBLIC PLAZA

16. The applicants are also seeking changes to the outdoor plaza area by including more tables and chairs, and specifically reserving a number of tables/chairs for use by the restaurant during certain times of day. In 2010, the Melting Pot received limited approval to use the plaza for outdoor dining, but it was not greatly used, due to the nature of that restaurant use. It is noted that the plaza area is not owned by the Town of Darien, but rather, the public has rights to use the space via an easement filed in the Darien Land Records. That easement was submitted for the record in this matter, as was a survey showing the location of the 1,775 square foot plaza, which is generally the area in the middle of the property between 14 and 20 Grove Street and the trees and the fountain.

OUTDOOR DINING

17. As part of this proposal, there will be additional outdoor seating for the public before 11:30am. A Proposed Seating Plan SPL1-0 last revised 4-24-2023 was submitted for the record. That plan shows 40 tables, some within the public plaza area and some within portions of the plaza not subject to the public easement, directly adjacent to the sides of the 14 and 20 Grove Street buildings and with frontage on Grove Street. To make room for tables and chairs along the Grove Street sides of the buildings, existing planting beds in front of the buildings along Grove Street are proposed to be removed. The trees in the plaza are to remain. Page 3 of the original application narrative references 43 tables and 116 seats. The Revised Proposed Outdoor Seating Plan in the revised application narrative references 53 tables with seating for up to 114 patrons.
18. Overall seating capacity on the subject property will be increasing via more outdoor seating. At the public hearing, the applicant noted that one or two tables directly near the entry door of the front of the restaurant (facing Grove Street) would be eliminated, as would the table near the entry door, to the residential apartments on the floors above, on the side of the 14 Grove Street building. This would allow for improved access.
19. At the public hearing, the applicants and their representative showed their proposal to use portions of the plaza exclusively by the subject restaurant starting at 11 or 11:30am for lunch, as well as additional portions of the plaza for dinner. It was noted that because tables would be surrounding the fountain, public access to the fountain would not be possible during certain hours, particularly during dinner service. There would be a different style of table adjacent to Espresso Neat and Flour Water Salt Bread to distinguish them from those to be used by the restaurant. Some Planning & Zoning Commission members noted that they were not comfortable with such large exclusive use of the plaza by a restaurant tenant.
20. Some Commission members believed that it was important to free up tables near, and in front of the fountain in the middle of the plaza, so as to allow for unencumbered public access in the evenings in the summer. A majority of the Commission was not comfortable with the overall amount and extent of seating proposed.
21. The Commission notes that after the public hearing closed on this matter, CGS Section 8-1cc was modified and took effect on May 1, 2023. That Statute, which is included as Exhibit 1 in this Resolution, allows for unlimited outdoor dining for restaurants on their own property. In this instance, however, part of the subject property is subject to a public plaza easement, which,

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 10

will require review and action by the Board of Selectmen. Other areas of the property, within portions of the plaza not subject to the public easement, directly adjacent to the sides of the 14 and 20 Grove Street buildings and in front of those buildings along Grove Street, do qualify for consideration under that newly adopted State Statute, which would allow the applicant to install seating/dining for a restaurant with only site plan review and approval by Planning & Zoning Department staff.

SPECIAL PERMIT AND SITE PLAN FINDINGS

22. The location and size of the use and the nature and intensity of the proposed operation, *as modified herein*, conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
23. The elements of the Site Plan, submitted as part of the Special Permit application accomplish the objectives for Site Plan approval as specified in subsections 1024-1025 of the Darien Zoning Regulations.
24. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.
25. The nature of the proposed changes and uses are such that the project will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.

NOW THEREFORE BE IT RESOLVED that Business Site Plan #234-B/Special Permit Application #236-A is hereby granted in part subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction and first floor and basement use shall be in accordance with the following plans as required to be revised herein:
 - 1) A conceptual interior *first-floor* plan for the new restaurant was included in the applicant's narrative as page A-13. It shows an interior seat count of 14 at the bar; 26 within the bar area; and 80 within two separate dining rooms, for a total of 120 indoor seats.
 - 2) The Commission hereby approves the request from the applicant for basement space to include: dry storage; employee restroom; employee lockers/changing area; freezer and cooler; sink; 200+/- square foot administrative office, which all were previously approved for the Melting Pot. The Commission is also approving a new food preparation area in the 1,500 square foot basement area.
Both the first-floor plan and the basement floor plans may be amended by the applicant and any changes required by the Fire Marshal, Health Department and/or the Building Department. However, the seating limit on the first floor, and uses and maximum square footage of basement (as shown on Sheet A-6 of the supplement to the application narrative) may not change without review and action by the Planning & Zoning Commission.

OUTDOOR SEATING/DINING

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 11

B. The Commission hereby modifies and approves the request for outdoor seating/dining as follows, *and the applicant shall prepare a revised plan showing such:*

- 1) FOR EXCLUSIVE USE OF THE RESTAURANT WITHIN THE LIMITS OF THE PUBLIC PLAZA EASEMENT AREA (refer to Exhibit 2):
 - a. A maximum of four (4) tables and 12 (twelve) seats located behind the fountain (not between the fountain and Grove Street) shall be permitted for dinner service only (beginning at 5pm— see Condition C for approved hours).
 - b. No exclusive use of tables or seating shall be permitted for brunch and/or lunch service within the limits of the public plaza easement area.

Any seating/dining to be established within the public plaza easement area requires review and action by the Board of Selectmen (BOS). Final approval of the outdoor seating/dining both within the public plaza area covered by the easement and the plaza area not covered by the easement requires review and action the Architectural Review Board (ARB).

- 2) SEATING OUTSIDE OF THE LIMITS OF THE PUBLIC PLAZA EASEMENT AREA
In accordance with Connecticut General Statute (CGS) 8-1cc, the applicant shall prepare a site plan showing outdoor seating/dining outside of the limits of the public plaza easement area. This shall be reviewed and administratively acted upon by the Director of Land Use.

HOURS AND DURATION

C. As part of this application, there are proposed changes in hours from those specifically approved for the Melting Pot. The Commission hereby approves the maximum hours of operation for

INDOOR use of the restaurant as follows:

- 11:30am to 11pm Monday through Wednesday;
- 11:30am to midnight on Thursday through Saturdays;
- 11am to 10pm on Sundays.

The Commission hereby approves the maximum hours of operation for OUTDOOR dining for the restaurant as follows:

- 11:30am to 10pm Monday through Wednesday;
- 11:30am to 10pm on Thursday through Saturdays;
- 11am to 10pm on Sundays.

Due to the presence of upstairs tenants and the adjacent Clock Hill Homes residences, the Commission is limiting the outdoor dining to 10pm every night. Outdoor dinner service shall cease by 10pm daily; however, the Commission acknowledges that if a customer(s) is finishing their meal/drinks past this time, they may remain for a reasonable amount of time until finished. Outdoor dining, in association with this approval, shall only be permitted between May 1 and October 31 each year.

The Commission acknowledges that this is an increase in hours over that of the Melting Pot. While CGS 8-1cc allows outdoor dining on an applicant's property until 9 p.m., requests for hours beyond that time must be approved by the Planning & Zoning Commission. Any change in the maximum hours in the future requires prior review and action by the Planning & Zoning

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 12

Commission as an amendment of this Special Permit.

LIGHTING

- D. No new lighting is proposed, and none is approved herein, other than small lights on the tables, if desired by the applicant's tenant.
- E. The applicant shall contract for removal of recyclables and trash from the dumpster area as often as necessary, and shall make reasonable efforts to schedule such collections to avoid nuisance to the nearby residents and avoid conflicts with the parking needs of adjacent businesses.
- F. Because of this restaurant's location directly below residential units and adjacent to Clock Hill Homes, it is imperative that odor be controlled and minimized so as not to become a nuisance.
- G. Proposed signage for the business is subject to review and action by the Architectural Review Board and the necessary Zoning/Building Permit(s). Any façade or door changes to the building also requires ARB review and a report. The style and details of the outdoor dining/seating, including tables and seats requires ARB review and a report. No outdoor seating/dining for exclusive use of any restaurant can be established within the public plaza easement area without the written approval by the Board of Selectmen.
- H. The granting of this Special Permit approval does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes, but is not limited to the installation of a grease trap of suitable size and design, and final floor plans, equipment specifications and clearance from the Darien Health Department prior to the issuance of a Zoning & Building Permit for this project. Review from Sewer Services will also be required.
- I. Because there is no new impervious surface created as part of this application, the Commission hereby waives the requirement for stormwater management under Section 880 of the Zoning Regulations.
- J. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- K. This permit shall be subject to the provisions of Sections 1009 and 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (June 27, 2024). This may be extended as per Sections 1009 and 1028.

All provisions and details of the plan, as required to be amended herein, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. Final revised plans and all other required documentation shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void. A Special Permit form shall be filed in the Darien Land Records.

EXHIBIT 1.—CGS 8-1cc

Sec. 8-1cc. (Note: This section is effective May 1, 2023.) Outdoor food and beverage service as accessory use. (a) For the purposes of this section, “beverage” includes alcoholic liquor or an alcoholic beverage, as defined in section 30-1, “food establishment” means a food establishment that is licensed or permitted to operate pursuant to section 19a-36i and “municipality” has the same meaning as provided in section 8-1a.

(b) Notwithstanding any provision of the general statutes, special act, municipal charter or ordinance, the zoning commission of each municipality shall allow any licensee or permittee of a food establishment operating in such municipality to engage in outdoor food and beverage service as an accessory use of such food establishment's permitted use. Such accessory use shall be allowed as of right, subject only to any required administrative site plan review to determine conformance with zoning requirements not contemplated by this section, provided such accessory use would not result in the expansion of a nonconforming use, and such licensee or permittee shall comply with any applicable provision of title 30.

(c) Any such licensee or permittee may engage in outdoor food and beverage service (1) on public sidewalks and other pedestrian pathways abutting the area permitted for principal use and on which vehicular access is not allowed, (A) provided such pathway (i) is constructed and maintained in compliance with physical accessibility guidelines, as applicable, under the federal Americans with Disabilities Act, 42 USC 12101, et seq., as amended from time to time, and the State Building Code, and (ii) extends for the length of the lot upon which the area permitted for principal use is located, and not less than four feet in width, not including any area on a street or highway, shall remain unobstructed for pedestrian use, and (B) subject to reasonable conditions imposed by the municipal official or agency that issues right-of-way or obstruction permits; (2) on off-street parking spaces associated with the permitted use, notwithstanding any municipal ordinance or zoning regulation establishing minimum requirements for off-street parking; (3) on any lot, yard, court or open space abutting the area permitted for principal use, provided (A) such lot, yard, court or open space is located in a zoning district where the operation of food establishments is permitted, (B) such use is in compliance with any applicable requirements for access or pathways pursuant to physical accessibility guidelines under the federal Americans with Disabilities Act, 42 USC 12101, et seq., as amended from time to time, and the State Building Code, and (C) the licensee or permittee obtains written authorization to engage in such service from the owner of such lot, yard, court or open space and provides a copy of such authorization to the zoning commission; and (4) until 9 o'clock p.m., or a time established by the zoning commission of the municipality, whichever is later.

(P.A. 22-1, S. 2; 22-118, S. 206.)

History: P.A. 22-1 effective May 1, 2023; P.A. 22-118 amended Subsec. (b) by adding provision re licensee or permittee compliance with title 30, effective May 1, 2023.

EXHIBIT 2.

**OUTDOOR SEATING/DINING FOR THE LIMITED EXCLUSIVE
USE OF THE RESTAURANT APPROVED WITHIN THE LIMITS
OF THE PUBLIC PLAZA EASEMENT AREA**

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 15

Chairman Olvany then read the next agenda item:

Coastal Site Plan Review #376 and Land Filling & Regrading Application #551, RRE Holdings, LLC, 244 Long Neck Point Road. Proposal to construct a 20'x 50' in-ground pool on the southern portion of site, and to perform related site development activities within a regulated area, including regrading of the property, installation of stormwater management, and connecting the main residence and cabin on the property to sanitary sewer in Long Neck Point Road. *HEARING CLOSED: 6/6/2023.*

Commission members noted that they had received a draft resolution. Mr. Balgach made a motion to adopt the resolution as written. That motion was seconded by Mr. Nedder, and approved by a vote of 4-0. The Adopted Resolution read as follows:

**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
June 27, 2023**

Application Number: Coastal Site Plan Review #376
Land Filling & Regrading Application #551

Street Address: 244 Long Neck Point Road
Assessor's Map #61 Lot #13-8

Name and Address of Property Owner: RRE Holdings, LLC
244 Long Neck Point Road
Darien, CT 06820

Name and Address of Applicant & Applicant's Representative: Avind Baur, E.I.T.
Kousidis Engineering
1525 Black Rock Turnpike
Fairfield, CT 06825

Activity Being Applied For: Proposal to construct a 20'x 50' in-ground pool on the southern portion of site, and to perform related site development activities within a regulated area, including regrading of the property, installation of stormwater management, and connecting the main residence and cabin on the property to sanitary sewer in Long Neck Point Road.

Property Location: The 1.13+/- acre subject property is located on the west side of Long Neck Point Road approximately 0.44 miles south of its intersection with Pear Tree Point Road.

Zone: R-1

Date of Public Hearings: May 23, 2023 and June 6, 2023
Deliberations Held: June 13, 2023

Time and Place: 7:30 P.M. Room 206 (Town Hall)

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 16

Publication of Hearing Notices

Dates: May 12 & 18, 2023

Newspaper: Darien Times

Date of Action: June 27, 2023

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:
July 6, 2023

Newspaper: Darien Times

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all applicable provisions of Sections 406, 810, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plans, and the statements of the applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to construct a 20'x 50' in-ground pool on the southern portion of site, and to perform related site development activities within a regulated area, including regrading of the property, installation of stormwater management, and connecting the main residence and cabin on the property to the sanitary sewer in Long Neck Point Road. The site is currently served by public water and an on-site septic system. The leaching field for the existing septic system, currently in the location of the proposed pool, is to be excavated.
2. The western portion of the property lies within the 100-year AE-15.0' flood zone; however, the Commission acknowledges that all proposed work is located entirely outside the regulated flood hazard area.
3. David Knauf, Director of Health for the Town, submitted comments for the record dated May 10, 2023. Mr. Knauf raised concerns relative to the proposed excavation of the septic leaching fields and noted that special precautions will need to be taken to prevent possible contamination of the Long Island Sound from sewage runoff and contaminated soil. He further directed that contaminated soil, stone, and pipe from the old system would need to be contained and buried on the site. Professional Engineer Jim Kousidis, of Kousidis Engineering, responded to Mr. Knauf's comments in a letter dated June 5, 2023, providing a detailed sequencing of construction activities intended to minimize any potential adverse impacts to the Long Island Sound. Refer to Condition 'C' for specific conditions of approval relative to construction sequencing. All comments are included as part of the record.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 17

4. The Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted comments on the application dated May 12, 2023. Those comments are included as part of the record on the matter. At the public hearing, no members of the general public spoke.

STORMWATER MANAGEMENT

5. A Drainage Analysis Report prepared by Kousidis Engineering, LLC, dated April 10, 2023 was submitted for the record as part of the original application. A separate Operations and Maintenance Plan is also included as part of the record, also dated April 10, 2023.
6. Professional Engineer Joseph Canas of Tighe & Bond submitted comments for the record dated May 17, 2023. Those comments are included as part of the record.
7. The subject property is located directly adjacent to the Long Island Sound and within the lower 1/3 of the watershed. Currently, runoff from the property drains directly to the Long Island Sound. At the public hearing, it was noted that water quantity and quality will be treated by utilizing new infiltrators to be installed to the south of the pool. The 2 through 50-year storm events will be mitigated by the system.

PROPOSED WORK WITHIN CAM AREA

8. A Coastal Area Management Report prepared by Kousidis Engineering, LLC, dated April 10, 2023 was submitted for the record as part of the original application. Though the subject property directly abuts the Long Island Sound, the proposed activity will not encroach into the 100-foot Critical Coastal Area Management area.
9. The Commission finds that the proposed improvements, if properly implemented, are not contrary to the goals, objectives, and policies of the Coastal Area Management Program.
10. The proposed activity as shown on the site development plan is consistent with the goals and policies in Section 22(a)-92 of the Connecticut General Statutes.
11. The potential adverse impacts of the proposed activity on coastal resources are acceptable.

LAND FILLING & REGRADING

12. The total proposed excavation is 148 cubic yards, the total proposed fill required is 139 cubic yards, with a net removal of 9 cubic yards of material. The material on site will be of a sufficient quantity without the need for importing any fill.
13. The final grade on the property will be positively pitched away from the new pool to mitigate impacts from stormwater. The final grades will not consist of steep slopes and thus will not present risk of scouring or erosion upon completion. The topsoil on site will be stockpiled and protected prior to construction of the pool and, and then used for final grading to reestablish the disturbed area. All mature vegetation on site is to remain to the extent that is feasibly possible.
14. Prior to any construction activity, sediment & erosion controls are proposed to be installed including a mud tracking pad and silt fence on the entire down-gradient portion of the property. These sediment & erosion controls are to be maintained throughout the duration of the project to mitigate impacts to the Long Island Sound and Long Neck Point Road.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 18

15. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000 of the Regulations.
16. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Coastal Site Plan Review #376 and Land Filling & Regrading Application #551 are hereby granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Work shall be in accordance with the following plans submitted to and reviewed by the Commission:

SURVEY

- Zoning Location & Topographic Survey, 244 Long Neck Point Road, Darien, Prepared for Patrick LeBedis by William W. Seymour & Associates, P.C., dated June 6, 2022, last revised May 4, 2023.

SITE PLAN

- Site Development Plan, 244 Long Neck Point Road, Darien, Prepared for Patrick LeBedis by Kousidis Engineering, LLC, dated April 10, 2023.

POOL PLANS

- LeBedis Residence, 244 Long Neck Point Road, Darien, Prepared by Signature Pools, dated April 10, 2023.

- B. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans in Condition 'A', above, including, but not limited to silt fencing, and an anti-tracking pad for construction access from Long Neck Point Road, and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and maintained to minimize any adverse impacts during the construction of the improvements and until the area has been revegetated and restabilized. The Planning and Zoning Department shall be notified prior to the commencement of work and immediately after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans.

CONSTRUCTION SEQUENCING

- C. The following construction sequencing shall be adhered to by the contractor to minimize any potential adverse impacts to the Long Island Sound as a result of the excavation of the septic leaching fields on the site:
 1. No disturbance or excavation within the existing leaching fields area shall take place without a 48-hour notice to the Darien Health Department and the design engineer.
 2. The existing residence and boat house is to be connected to the available public sewer system in Long Neck Point Road prior to any pool excavation activity.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 19

3. All existing hollow septic structures (septic tanks, pump chambers, etc.) shall be pumped dry of any effluent prior to any excavation. The distribution boxes shall be evaluated as well prior to any excavation activity.
4. The topsoil shall be removed from the surface area of the pool and the surrounding area of proposed grading.
5. The pool excavation shall begin at the southernmost end of the pool. This material shall be clean native material and shall be used to create a berm along the proposed fill package around the pool. This will create a barrier between the excavated area and the tidal waters.
6. Once all clean material has been placed along the perimeter of the fill package, the leaching fields shall be excavated, and the material be placed on the uphill side of the berm.
7. The excavation of the pool in the leaching fields area shall extend a minimum of 10 feet beyond the pool limit. An additional 10 feet of pipe and trench shall be removed and placed behind the berm.
8. When all the contaminated material has been excavated from the pool area, the remainder of the soil shall be placed over and around this material to act as a cap.

PERMITS REQUIRED

- D. The granting of this Permit does not relieve the applicant of the responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies. This includes the requirement for Zoning and Building Permits for the proposed pool, and a permit from Darien Sewer Services for the new connection to the sanitary sewer line.

PRIOR TO ISSUANCE OF A CERTIFICATE OF ZONING COMPLIANCE

- E. Prior to the request for the Certificate of Zoning Compliance for the proposed improvements, the applicant shall submit the following:
1. A final "as built" map and/or other evidence that all improvements have been properly completed in accordance with the approved plans, and comply with zoning setback requirements;
 2. A letter from a professional engineer that the installation of the proposed stormwater management system has been completed in accordance with the approved plans referred to in Condition 'A', above; and
 3. The Commission hereby requires that the as-built survey/drawing prepared by a licensed land surveyor shall show all utilities or buried infrastructure installed as part of this land use proposal. The as-built survey/drawing shall include measurements from known, permanent, and visible surface features so that buried infrastructure can be located in the field in the future.
- F. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke this permit as it deems appropriate.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 20

- G. This permit shall be subject to the provisions of Sections 815 and 1005 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (June 27, 2024). This time limit may be extended as per Sections 815 and 1005 of the Regulations.

All provisions and details of the plans, as approved, shall be binding conditions of this action and such approval shall become final upon compliance with these conditions and the signing of the final documents by the Chairman. A Special Permit Form and Notice of Drainage Maintenance Plan Form shall be filed in the Darien Land Records prior to the issuance of a Zoning and Building Permit for the pool.

At about 10:05 p.m., Chairman Olvany read the next agenda item:

Deliberations ONLY regarding:

Special Permit Application #329-A / Site Plan, Town of Darien, 40 & 46 Great Island. Proposal to rent the stables and associated equestrian facilities on Great Island to an outside operator with the specialized expertise necessary to run a full-service show stable for programmed active recreational use with specific restrictions and limits. These indoor and outdoor facilities include an 18-stall granite stable and indoor heated riding arena, an outdoor sand dressage ring, and a half-size polo field as well as numerous paddocks and riding trails that comprise the facility. The operator of the facilities would be a full-service show stable offering full boarding and training of up to 23 horses, a riding lesson program, an animal therapy program, and a summer children's program. *HEARING CLOSED: 6/20/2023.*

It was noted that since Ms. Barsanti was recusing herself on this matter, that there was not a quorum present, and thus, the Commission did not deliberate on this application.

Chairman Olvany read the next agenda item:

Coastal Site Plan Review #372, Flood Damage Prevention Application #436, Land Filling & Regrading Application #544, Mitchell & Kerry Ross, 17 Nickerson Lane. Proposal to construct a new 6-bedroom single-family dwelling on a now vacant lot, construction of a new driveway and parking court, patio and terrace areas, and a pool; and to perform related site development activities, including regrading of the property and installation of stormwater management. *HEARING CLOSED: 6/20/2023.*

Mr. Olvany confirmed that revised plans had been received during the application process. Mr. Nedder mentioned the neighbors' concerns with the oak tree in the front of the proposed house, in the vicinity of the new proposed driveway. Mr. Balgach said that due to the location of the proposed house and the proposed driveway, that would be difficult to save. Ms. Barsanti said that in this instance, it would be appropriate to have a Site Monitor during the project. Mr. Nedder agreed. Mr. Balgach suggested that the Site Monitor could be LandTech, who was the applicant's engineer. All agreed. Staff was instructed to draft a resolution for a meeting in July.

PLANNING & ZONING COMMISSION
MINUTES
PUBLIC HEARING / GENERAL MEETING
JUNE 27, 2023
PAGE 21

Approval of Minutes

April 18, 2023

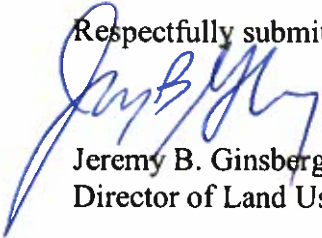
Mr. Nedder made a motion to approve the minutes as written. That motion was seconded by Ms. Barsanti and was approved by a vote of 4-0.

June 6, 2023

Mr. Balgach made a motion to approve the minutes as written. That motion was seconded by Ms. Barsanti and was approved by a vote of 4-0.

There being no other business, Mr. Nedder made a motion to adjourn the meeting. That motion was seconded by Mr. Balgach and unanimously approved by a vote of 4-0. The meeting was thus adjourned at 10:20 p.m.

Respectfully submitted,



Jeremy B. Ginsberg, AICP
Director of Land Use

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